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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Michael Geva, et al.

Serial No.: 09/757,099

Filed: January 8, 2001

For: ELECTRONIC DEVICE HAVING A BARRIER REGION INCLUDING
ALUMINUM AND A METHOD OF MANUFACTURE THEREFOR

Group No.: 2882

Examiner: Wang, George Y.

Commissioner for Patents
Washington, D. C. 20231

#6
Wang
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Sir:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on 6-14-02 (Date)
Elizabeth Schumacher
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Elizabeth Schumacher
(Signature of the person signing the certificate)

ELECTION OF CLAIMS

In response to the Official Action of May 21, 2002, Applicant hereby provisionally elects, with traverse, Claims 1-16, comprising Group II.

Applicant submits that the restriction requirement is improper. The Foreword to the MPEP states: "The Manual does not have the force of law. 35 USC 121, the law, states in relevant part: "If two or more independent AND distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions." Emphasis

added. The Examiner has only argued that the inventions are distinct. The Examiner has not also argued, as is required by statute, that they are also independent, a much greater burden.

Additionally, the present groups include claims that fall under the MPEP § 806.05(c), Example II. As set forth in the MPEP, where the relationship between the claims is such that the separately claimed subcombination, i.e., Group II, constitutes the essential distinguishing feature of the combination, i.e., Group I, as claimed, the inventions are not distinct and a requirement for restriction must not be made, even though the subcombination has separate utility. In the present case, the restriction is improper because the elements recited in Claim 1 of Group II constitutes the essential distinguishing feature of the combination recited in Group I, claims 17-20.

Therefore, Applicants respectfully request that the restriction requirement be withdrawn.

Group I (Claims 17-20) are provisionally canceled without prejudice pursuant to 37 C.F.R. § 1.142(b).

Respectfully submitted,

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